

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CRIMINAL #04-10384-PBS

UNITED STATES

v.

DANIEL KAMEN

**DEFENDANT’S MOTION TO STRIKE
“NOTICE OF ADDITIONAL FACTORS” and
“FORFEITURE ALLEGATION”
FROM INDICTMENT**

Daniel Kamen, defendant in the above-captioned case, moves that the Court strike the “Notice of Additional Factors” (page 2 of the indictment) and the “Forfeiture Allegation” (page 3 of the indictment) from the indictment that is read to the jury and submitted to the jury for its consideration. In support of this motion, the defendant states:

1. The indictment was returned on December 22, 2004, at a time when the government had a practice of including sentencing factors in the indictment. Because the Supreme Court clarified the application of the sentencing guidelines in Booker, it is no longer necessary to include those allegations.
2. The indictment also includes a forfeiture allegation, seeking forfeiture of the three video tapes that were seized from the defendant on December 6, 2004. Those videos are in the custody of the government. The defendant will not seek return of them, and there is no need to include the allegation in the indictment that is considered by the jury.

Respectfully submitted,

DANIEL KAMEN

By his attorneys,

/s/ Charles W. Rankin

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on October 30, 2006

/s/ Charles W. Rankin

Charles W. Rankin